

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Access Charge Reform for Incumbent)
Local Exchange Carriers Subject to)
Rate-of-Return Regulation)

CC Docket No. 98-77

COMMENTS OF
THE TELEPHONE ASSOCIATION OF NEW ENGLAND

David Cosson
Kraskin, Lesse & Cosson, LLP
2120 L Street, NW, Suite 520
Washington, DC 20037
Tel: (202)296-8890
Fax: (202)296-8893

August 17, 1998

No. of Copies rec'd _____
List ABCDE _____

0112

TABLE OF CONTENTS

SUMMARY	ii
I. CHANGES IN INTERSTATE ACCESS RULES SHOULD BE TIMED TO COORDINATE WITH OTHER CHANGES THAT AFFECT UNIVERSAL SERVICE	1
A. Access Revenues Are a Significant Portion of Total Revenues For Rate-of-Return LECS	2
B. Open FCC Dockets on Separations, Universal Service, and Definition of Primary Line Need Resolution In Order To Determine Appropriate Revisions To the Access Charge Structure.	3
C. Because Intrastate Access Charges Generally Follow the Interstate Structure, Shifts of Interstate Cost Recovery From Carrier to End User Charges May Have A Negative Impact on Universal Service.	4
II. ACCESS REFORM FOR RATE OF RETURN LECS MUST MODERATE THE IMPACT OF THEIR HIGHER COSTS ON THE CEILINGS FOR SLCS AND PICCS	6
A. SLC and PICC Should Be Capped At The Nationwide Average	7
B. The Commission Should Affirmatively Require Interexchange Carriers To Comply With Section 254(g) By Utilizing Nationwide Average Pricing of Any PICC Pass Through.	8
C. The Commission Should Not Increase the Revenue Requirements To Be Recovered Through the Carrier Common Line Charge By Rate of Return LECs	8
D. Rate of Return LECs Should Be Given Pricing Flexibility To Respond To Competition.	9
III. CONCLUSION	9

SUMMARY

The Telephone Association of New England (TANE) shows in its comments that the Commission must coordinate the timing of any changes in access rules with other universal service rules. This coordination is especially important for TANE's rate-of-return regulated LECs, because inter- and intrastate access revenues account for an average of more than 70% of their total operating revenues. Thus the resolution of the Commission's open dockets on separations, universal service and definition of primary line are needed in order to determine appropriate revisions to the access charge structure. Because states generally follow the federal access charge structure, shifts of cost recovery to end users has a significant potential for impact on end users.

If the Commission proceeds with the proposed changes including increased subscriber line charges (SLC) and the introduction of primary interexchange carrier charges (PICC), it must moderate the impact of higher costs by capping those charges at the nationwide average. The Commission should also provide more flexibility to allow recovery of the remaining carrier common line charge through terminating access charges. This flexibility is needed to address the rate disparity concerns of arbitrage and bypass. The Commission should require any pass through of PICC charges by interexchange carriers to be at nationwide average rates in compliance with Section 254(g) of the Communications Act.

The proposals to shift cost recovery from traffic sensitive to common line should not be adopted because they are in direct conflict with the proposals to reduce the carrier common line charge. Finally, the rate-of-return LECs will need increased pricing flexibility.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Access Charge Reform for Incumbent)	CC Docket No. 98-77
Local Exchange Carrier Subject to)	
Rate-of-Return Regulation)	

**COMMENTS OF
THE TELEPHONE ASSOCIATION OF NEW ENGLAND**

The Telephone Association of New England (TANE), by its attorney, hereby files its Comments in response to the Notice of Proposed Rulemaking (NPRM) in this proceeding released June 4, 1998, FCC 98-101. TANE is a regional association of the 50 incumbent local exchange carriers (LECs) operating in the six New England States. These comments are filed on behalf of the TANE members subject to rate of return regulation, which includes all LECs except Bell Atlantic and SNET.

**I. CHANGES IN INTERSTATE ACCESS RULES SHOULD BE TIMED TO
COORDINATE WITH OTHER CHANGES THAT AFFECT UNIVERSAL
SERVICE**

The Commission has proposed in the NPRM to extend to rate of return carriers the rules applicable to price cap carriers, which increase the subscriber line charge (SLC) for non-primary lines and adopt primary interexchange carrier charges (PICCs) to replace (in part) the usage-based carrier common line charge (CCL).¹ The NPRM also proposes shifts of traffic sensitive

¹ Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, *Notice of Proposed Rulemaking*, CC Docket No. 98-77, Released June 4,

costs to the common line revenue requirement or to billing and collection. Because of the potential substantial subscriber impact of these changes, it is important that the Commission establish a specific understanding of , and coordination with, other major proceedings that will significantly affect LEC cost recovery prior to making major decisions affecting access charge rates and structures.

A. Access Revenues Are a Significant Portion of Total Revenues For Rate-of-Return LECS

The small and rural LECs, which are all rate-of-return regulated carriers, have a cost recovery structure significantly different from that of the Price Cap LECs for which the Commission prescribed revised access charge levels and structures in 1997.² Access revenues account for more than 70% of the total operating revenues of TANE rate of return companies.³ While this figure includes intrastate access, most jurisdictions follow the interstate structure and in some cases the level as well.⁴ These carriers are thus much more sensitive to changes in access charge structure and levels than are the price cap carriers. Further, because of their often significantly higher cost per access line, the impact on the affordability and comparability of telephone service of shifts in cost recovery to end users may be much more substantial for the customers of TANE's rate-of-return LECs.

1998. ("NPRM").

² Access Charge Reform, *First Report and Order*, CC Docket No. 96-262, 12 FCC Rcd 15982 (1997).

³ See, Rural Utilities Service, 1996 Statistical Report, Rural Telecommunications Borrowers. (RUS Data) The RUS Data include a small amount of long distance revenues for some carriers.

⁴ See, n. 11, *infra*.

B. Open FCC Dockets on Separations, Universal Service, and Definition of Primary Line Need Resolution In Order To Determine Appropriate Revisions To the Access Charge Structure.

While the access charge changes were made effective January 1, 1998 for price cap carriers, it has since become apparent that resolution of three major interrelated proceedings may be more difficult and time consuming than expected at the time of that decision. First, Separations reform has been revealed to be a complex undertaking.⁵ The Commission is currently considering various proposals that could change the amount of cost allocated and recovered through the interstate jurisdiction.⁶ Second, the Commission has not established the precise details of the mechanisms that will determine high cost universal service support, beginning in 1999 for non-rural companies and after 2001 for rural companies.⁷ Chairman Kennard recently stated that 2001 was not to be considered a target date and that rural companies would not be converted to the new system until it was clear that the system would protect universal service.⁸ Third, after establishing the requirements that price cap carriers charge different prices for SLCs and PICCs to primary and secondary residential lines, the Commission

⁵ Interstate access cost is defined by the percentage of a LEC's total cost allocated to the interstate jurisdiction by the Commission's jurisdictional separations rules, 47 C.F.R. Part 36.

⁶ Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, *Notice of Proposed Rulemaking*, Released October 7, 1997.

⁷ The groupings of rural/ non-rural and rate-of-return/price cap do not exactly coincide nationwide; however for TANE members, all rate-of-return LECs are also rural telephone companies and no price cap companies are rural telephone companies.

⁸ Statement of William E. Kennard before Subcommittee on Communications, Committee on Commerce, Science and Transportation, United State Senate, Anchorage, AK, July 1, 1998.

opened a proceeding to establish definitions of these terms.⁹ Although the access revisions have been in place for over seven months, the Commission has not yet adopted these critical distinctions. Comments in the Docket pointed out, however, that the distinction between primary and secondary lines could be very difficult to administer in the residential market and that the revenue projections therefore might not be reliable.¹⁰

C. Because Intrastate Access Charges Generally Follow the Interstate Structure, Shifts of Interstate Cost Recovery From Carrier to End User Charges May Have A Negative Impact on Universal Service.

The states served by TANE members have intrastate access rate structures that generally follow the interstate pattern.¹¹ Adoption of the Commission's proposal to reduce the carrier common line charges by increases in SLCs for non-primary lines and by implementing PICCs, could thus result in reduced intrastate CCL rates. On the state level, whether an intrastate SLC is charged or a local rate increased, the impact on the subscriber is the same. Similarly, if intrastate PICC charges are passed through by an interexchange carrier, even if it reduces toll rates proportionally, there will be an effective local rate increase for low volume pre-subscribed users

⁹ Defining Primary Lines, *Notice of Proposed Rulemaking*, CC Docket 97-181, 12 FCC Rcd 13647 (1997).

¹⁰ For example, if the distinction is by account, then subscribers are incited to establish multiple accounts. If the distinction is by dwelling unit, then there will be continual arguments about what is a separate unit in the same building or on the same property. Where multiple carriers, wireline and/or CMRS are involved, no one company has records to show multiple service accounts, nor is it clear which carrier would be primary. As to the second home in another LEC's territory, there does not appear to be even an imperfect way to determine what is a secondary line.

¹¹ A comparable structure helps to minimize jurisdictional arbitrage and administrative difficulty. Maine law requires that the Public Utilities Commission "establish...intrastate access rates that are less than or equal to interstate access rates established by the Federal Communications Commission." Sec. 1.35-A MRSA Sec.7101-B2.

as well as for any users not pre-subscribed.

To the extent adopting the federal structure and levels for intrastate access has a universal service impact, the states do have options to establish a state universal service fund. However, the New England states have not yet adopted state funds, in part because they are waiting for the Commission to determine critical dimensions of the federal fund.¹² In addition to the details of the forward looking cost model, a major determinant of the structure of a state fund is the resolution of the reconsideration petitions regarding the Commission's initial decision to fund only 25% of the amount necessary for the federal fund.¹³ Although the 75/25% decision has been recently described as a "place holder" until a satisfactory solution is found, the states are faced with significant uncertainties about the level of universal service support that will be needed.¹⁴ It is therefore difficult for states to adapt to access structure and level changes that have universal service implications.

In addition to the regulatory complexities, the market need for revision of the access charge rules is less urgent in rural areas served by rate-of-return LECs because of the lower competitive pressure. The NPRM raises the "chicken and egg" question of whether the slower development of competition is a result of the requirements of Section 251(f).¹⁵ That provision requires a bona fide request for interconnection and state commission determination that the

¹² Vermont has a fund which supports Lifeline, TRS and E911.

¹³ The 25% funding level proposed would require the Maine, Vermont and New Hampshire to raise very substantial amounts in a state universal service fund, before any adjustments to their intrastate access structures.

¹⁴ Federal-State Joint Board on Universal Service, *Report to Congress*, Apr. 10, 1998, p.11.

¹⁵ NPRM at para. 44.

public interest will be served before the state commission may remove the exemptions of rural carriers to the requirements of Section 251(c). Congress decided each such proposal should be examined by a state commission to protect the public interest even though it recognized that rural areas would often not be attractive to competitors, because it also recognized that the potential for harm to universal service was sufficiently greater than in areas served by non-rural LECs.

The lack of competitive LEC requests for interconnection in rural areas is largely a factor of the lack of an economic basis for multiple carriers in low density areas. Only one TANE rate-of-return member has received such a request. Bernard Ebbers, Chairman of Worldcom recently reflected CLEC industry thinking when he told the Washington Post: "Now will we ever be in Butte, Montana? Probably not. But will we be into a lot of the residential areas of bigger metropolitan areas? For sure."¹⁶

TANE therefore urges the Commission to proceed carefully and avoid fixing things that aren't broken.

II. ACCESS REFORM FOR RATE-OF-RETURN LECS MUST MODERATE THE IMPACT OF THEIR HIGHER COSTS ON THE CEILINGS FOR SLCS AND PICCS

In light of the concerns discussed in Part I, above, should the Commission nevertheless determine to proceed with some or all of its proposals, it must do so in a manner that allows the end user charges, both intra- and interstate, of rate-of-return LECs to remain consistent with the statutory requirements of affordability and comparability.

¹⁶ Mills, Call of the Dialing Dollars, *Washington Post*, June 22, 1998, p. 12,13. Butte, Montana, population 33,000, is larger than any community served by a TANE rate-of-return LEC.

In addition to the inability to forecast accurately the impact of changes in access rules because of the open dockets discussed in Section I, implementation of the basic proposals in this proceeding would necessarily require time for the rate-of-return LECs to adjust their billing and other systems. The Commission should, therefore, set an implementation date which allows the LECs and NECA sufficient time to prepare after a final order is released. The amount of time required will depend upon the changes ultimately adopted.

A. SLC and PICC Should Be Capped At The Nationwide Average.

The NPRM acknowledges that because of the higher costs of rate-of-return LECs, application of the price cap SLC and PICC rules to them would result in substantially higher rates to the customers of the rate-of-return LECs. To mitigate this disparity, the Commission suggests a ceiling based either on the charges of a neighboring price cap LEC or a national average.¹⁷ TANE recommends the national average approach because that method will provide a sufficient moderating effect, is consistent with the philosophy of various components of the universal service mechanism, and is administrable within the context of the NECA common line pool in which all TANE rate-of-return LECs participate.

Because of their higher costs, rate-of-return LECs will still have a significant carrier common line residual revenue requirement after imposition of the PICCs and increased SLCs. The carrier common line charge of these carriers will thus have a significant and growing disparity with nearby price cap LECs. TANE believes that the Commission should provide more flexibility for rate-of-return LECs to recover an increased share of this remaining carrier common line revenue requirement through terminating access charges, in order to reduce

¹⁷ NPRM at para. 40

somewhat the disparity with originating CCL rates of price cap LECs. The flexibility to utilize the different market characteristics of originating and terminating access can be an important tool for rate-of-return companies to address the rate disparity concerns of arbitrage and bypass.

- B. The Commission Should Affirmatively Require Interexchange Carriers To Comply With Section 254(g) By Utilizing Nationwide Average Pricing of Any PICC Pass Through.

Section 254(g) requires the Commission to adopt rules to require interexchange carrier rates to subscribers in rural and high cost areas to be no higher than rates charged by each carrier in urban areas, and in each state at rates no higher than rates charged to subscribers in any other state. Several interexchange carriers have passed through PICC charges from price cap LECs to their retail customers. These charges have been the source of considerable controversy, much of it apparently unanticipated. If PICCs are also charged by rate-of-return LECs, then any pass through should be subject to explicit Commission rules requiring compliance with Section 254(g). Such action will not only serve the purposes of the Act, but minimize surprises and controversy by ensuring that consumers, regulators and legislators all know what is going to happen.

- C. The Commission Should Not Increase the Revenue Requirements To Be Recovered Through the Carrier Common Line Charge By Rate-of-Return LECs

The NPRM proposes several shifts of cost recovery from traffic sensitive to common line revenue charges. Included are local switching ports,¹⁸ and the Transport Interconnection Charge (TIC)¹⁹ Such a shift to common line recovery would be inconsistent with the stated purposes of

¹⁸ NPRM at para. 55

¹⁹ NPRM at paras. 70-72.

adoption of the SLC and PICC charges, i.e., to reduce the minute of use based common line charge as much as possible. TANE believes it is better to continue to recover these costs under the present rules than to raise even further the disparity with price cap LEC CCL charges.

D. Rate-of-Return LECs Should Be Given Pricing Flexibility To Respond To Competition.

Although competition will not develop as rapidly throughout the service areas of rate-of-return LECs, for the reasons discussed above, it is clear that there have been and will be more situations where competitors target the few higher volume or higher density customers of some of these LECs. The Commission's proposal seeks to accommodate this problem to a limited extent, by changing the prescribed rate structure. In the longer run, the federal rule making process, or the rule waiver process, will not be able to keep pace with the variety of changes in the marketplace occurring in the various parts of the nation. The Commission must, therefore, begin to recognize that incumbent LECs cannot both fulfill their universal service obligations and compete using only government controlled rate structures and levels in a market contested by totally unregulated entities. The more incumbents lose the high volume business because they can't respond to competition, the more universal service support they will need to continue service to the low volume and high cost customers, which the unregulated entrants will successfully "red-line" out of their service areas.²⁰

III. CONCLUSION


The Telephone Association of New England has emphasized in these comments that because of the greater significance of access revenues to rate-of-return LECs, any changes in

²⁰ See note 16, above.

their structure must be coordinated with other pending changes which will also have an impact on charges to end users and thus on Universal Service. The Commission should also consider that the effect of any shift of cost recovery to end users may be magnified in states which follow the interstate structure. The current lack of local competition in rural areas, a result of their unattractiveness to new entrants rather the protections of Section 251(f), permits the Commission to consider its rule changes carefully. Should the Commission adopt access reform rules at this time, it should moderate the impact by capping SLC and PICC charges at the nationwide average, and require interexchange carriers to comply with Section 254(g) by utilizing nationwide average pricing of any PICC pass through. Finally, the Commission should not increase the carrier common line requirements by transfer of traffic sensitive revenue requirements.

Respectfully submitted:

The Telephone Association of New England

BY: 

David Cosson
Kraskin, Lesse & Cosson, LLP
Its Attorney

2120 L Street, NW, Suite 520
Washington, DC 20037
Tel: (202)296-8890
Fax: (202)296-8893

CERTIFICATE OF SERVICE

I, Colleen von Hollen, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that on this 17th day of August, 1998, a copy of the foregoing "Comments" on behalf of the Telephone Association of New England, was served via hand delivery to the following parties:

Colleen von Hollen

Colleen von Hollen

Chairman William Kennard
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554

Commissioner Michael Powell
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554

Competitive Pricing Division (2 copies)
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 518
Washington, DC 20554

ITS
1919 M Street, NW, Room 246
Washington, DC 20554